

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERITAGE REALTY MANAGEMENT, INC.,)	Case No. CA 04 - 333 ERIE
Plaintiff)	Judge Sean McLaughlin
)	
v.)	
)	
JOHN ALLIN d/b/a ALLIN COMPANIES, Defendant-Third Party Plaintiff)	
)	
v.)	
)	
SYMBIOT BUSINESS GROUP, INC. and SYMBIOT SNOW MANAGEMENT NETWORK, LLC, Third Party Defendants)	TRIAL BY JURY OF 12 DEMANDED

**DEFENDANT'S MOTION FOR LEAVE OF COURT
TO FILE THIRD PARTY COMPLAINT NUNC PRO TUNC**

AND NOW, the Defendant, John Allin d/b/a Allin Companies, by and through his attorneys, ELDERKIN, MARTIN, KELLY & MESSINA, files the following Motion for Leave of Court to File Third Party Complaint Nunc Pro Tunc, respectfully representing as follows:

1. On February 17, 2006, the Plaintiff filed a second amended complaint.
2. On March 8, 2006, Defendant filed his answer to the second amended complaint.
3. On March 9, 2006, Defendant filed his third party complaint against Symbiot Business Group, Inc. and Symbiot Snow Management Network, LLC (“Symbiot”).

4. On March 10, 2006, Symbiot filed a motion to strike and/or dismiss the third party complaint. One of the grounds asserted by Symbiot in support of its motion is the claim that leave of court was required to permit the filing of the third party complaint.

5. The Defendant denies that leave of court was required and he does hereby incorporate by reference the brief filed by Defendant in opposition to Symbiot's motion.

6. If, however, and in the event that, the court determines that leave of court was required, the Defendant files this motion seeking such leave nunc pro tunc based upon the arguments and citations set forth in the Defendant's brief filed in opposition to Symbiot's motion.

WHEREFORE, if the Court determines that leave of court is required to file a third party complaint against Symbiot, the Defendant hereby respectfully requests that such leave be granted nunc pro tunc.

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

By /s/ Craig A. Markham
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